

## § 750.2

classification, applied on a proportionate basis (with a variance in severance benefits relating to any criterion of plus or minus ten percent) to groups of employees consisting of not less than 33% of all employees.

(j) *Payment* means:

(1) Any direct or indirect transfer of any funds or any asset;

(2) Any forgiveness of any debt or other obligation;

(3) The conferring of any benefit; or

(4) Any segregation of any funds or assets, the establishment or funding of any trust or the purchase of or arrangement for any letter of credit or other instrument, for the purpose of making, or pursuant to any agreement to make, any payment on or after the date on which the funds or assets are segregated, or at the time of or after such trust is established or letter of credit or other instrument is made available, without regard to whether the obligation to make such payment is contingent on:

(i) The determination, after such date, of the liability for the payment of such amount; or

(ii) The liquidation, after such date, of the amount of such payment.

(k) *Prohibited indemnification payment.*

(1) *Prohibited indemnification payment* means any payment or any agreement or arrangement to make any payment by any Federally insured credit union for the benefit of any person who is or was an IAP of the Federally insured credit union, to pay or reimburse such person for any civil money penalty, judgment, or other liability or legal expense resulting from any administrative or civil action instituted by NCUA or any appropriate state regulatory authority, in the case of a credit union or corporate credit union chartered by a state, that results in a final order or settlement pursuant to which such person:

(i) Is assessed a civil money penalty;

(ii) Is removed from office or prohibited from participating in the conduct of the affairs of the Federally insured credit union; or

(iii) Is required to cease and desist from an action or take any affirmative action described in section 206 of the Act (12 U.S.C.1786) with respect to the credit union.

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(2) *Exceptions. Prohibited indemnification payment* does not include any reasonable payment that:

(i) Is used to purchase a commercial insurance policy or fidelity bond, provided that the insurance policy or bond must not be used to pay or reimburse an IAP for the cost of any judgment or civil money penalty assessed against the IAP in an administrative proceeding or civil action commenced by NCUA or the appropriate state supervisory authority, in the case of a credit union or corporate credit union chartered by a state, but may pay any legal or professional expenses incurred in connection with a proceeding or action or the amount of any restitution, to the Federally insured credit union or its conservator or liquidating agent; or

(ii) Represents partial indemnification for legal or professional expenses specifically attributable to particular charges for which there has been a formal and final adjudication or finding in connection with a settlement that the IAP has not violated certain laws or regulations or has not engaged in certain unsafe or unsound practices or breaches of fiduciary duty, unless the administrative action or civil proceeding has resulted in a final prohibition order against the IAP.

(1) *Troubled condition* means any Federally insured credit union that meets the criteria as described in §701.14(b)(3) and (4) of this chapter, or has been granted assistance described in sections 208 or 216 of the Act.

[76 FR 30517, May 26, 2011, as amended at 76 FR 36980, June 24, 2011]

### § 750.2 Golden parachute payments prohibited.

A Federally insured credit union must not make or agree to make any golden parachute payment, except as permitted by this part.

### § 750.3 Prohibited indemnification payments.

A Federally insured credit union must not make or agree to make any prohibited indemnification payment, except as permitted by this chapter.<sup>1</sup>

<sup>1</sup>The provisions in this part 750 control to the extent of any inconsistency with §701.33 of this chapter.